

1
2
3
4
5
6
7
8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

11 FAIRHAVEN GROUP, INC. d/b/a
12 BRENTHAVEN, a Washington corporation,
13
14 Plaintiff,

15 vs.

16 RIVERSIDE TECHNOLOGIES, INC.,
17 a Nebraska corporation, and DOES 1-10,
18 inclusive

19 Defendant.

Civil Action No. 2:16-cv-01962

**COMPLAINT FOR TRADE DRESS
INFRINGEMENT AND UNFAIR
COMPETITION**

JURY DEMAND

20 **I. NATURE OF ACTION**

21 1. For over thirty years, Plaintiff Fairhaven Group, Inc. d/b/a Brenthaven
22 (“Plaintiff” or “Brenthaven”) has been a pioneer and leader of innovative and distinctive designs
23 of mobile technology carrying cases.

24 2. Brenthaven has spent significant sums of money designing, promoting and
25 fostering the success of its products. Brenthaven’s creative achievements have resulted in wide
26 spread customer recognition of its distinctive product designs and intellectual property protection
27 for its product innovations.

28 3. Among its many innovations, Brenthaven owns a unique trade dress to its

1 Tred™ Sleeve 13-inch bag (the “Tred™ Sleeve”). One of Brenthaven’s imitators is Defendant
2 Riverside Technologies, Inc. (“Defendant” or “Riverside”) which introduced a bag that it
3 markets under the name Vertical Vault. Instead of pursuing its own independent development
4 design, Riverside has chosen to closely copy Brenthaven’s innovative and distinctive design in
5 clear violation of Brenthaven’s valuable intellectual property rights, and without Brenthaven’s
6 authorization. As shown in detail below, Riverside has manufactured and sold its Vertical Vault
7 product through widespread trade dress infringement, and has falsely designated the origin of its
8 infringing product, has unfairly competed with Brenthaven, and has damaged Brenthaven’s
9 business reputation in the eyes of consumers.

10 4. By this action, Brenthaven now seeks to put a stop to Riverside’s illegal
11 conduct and to obtain fair compensation for the violations that have occurred thus far.

12 II. PARTIES

13 5. Brenthaven is a Washington corporation having its principal place of
14 business at 321 3rd Avenue South, #403, Seattle, WA 98104.

15 6. Brenthaven is informed and believes, and on that basis alleges, that
16 Riverside Technologies Inc. is a Nebraska corporation with its principal place of business at 748
17 N. 109th Court, Omaha, NE 68154.

18 7. Brenthaven is ignorant of the true names and capacities of the Defendants
19 sued herein under the fictitious names Does 1-10 (the “Doe Defendants”). Upon information and
20 belief, the Doe Defendants have engaged in, supported, and/or directed the activities of
21 Riverside, or are otherwise responsible for the acts and omissions, for each of the matters alleged
22 in this Complaint. To date, Brenthaven has been unable to identify the names of the Doe
23 Defendants and, therefore, sues them by their fictitious names at this time. Brenthaven will
24 amend this Complaint to allege the true names and capacities of such Doe Defendants when
25 ascertained.

26
27
28 Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 2

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
1850 Skyline Tower - 10900 N. E. Fourth Street
Bellevue, Washington 98004-8341
Telephone (425) 462-4700 FAX (425) 451-0714

III. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction of this action under 15 U.S.C. § 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1338(a) (any Act of Congress relating to patents or trademarks); and 28 U.S.C. § 1338(b) (action asserting a claim of unfair competition joined with a substantial and related claim under the trademark laws).

9. This Court has personal jurisdiction over Riverside because it has committed, and continues to commit, acts of infringement in violation of 15 U.S.C. § 1125 in the State of Washington, including in this Judicial District, conducts business in the State of Washington, including in this District, and places infringing products into the stream of commerce, all with the knowledge and understanding that such products are sold in the State of Washington, including in this District. The actions by Riverside have caused injury to Brenthaven within this District. Upon information and belief, Riverside derives substantial revenue from the sale of products, including the infringing products, within this District, expects its actions to have consequences within this District, and derive substantial revenue from interstate and international commerce.

10. Venue is proper within this District under 28 U.S.C. §§ 1391(b) and (c) because Riverside is registered to do business in this District and, in fact transacts business within this District and offers for sale in this District products that infringe Brenthaven's Tred™ Sleeve trade dress. Moreover, on information and belief, a substantial part of the events giving rise to the claims in this action occurred in this District and Brenthaven has suffered harm in this District.

IV. BACKGROUND

BRENTHAVEN'S TRADE DRESS

11. Brenthaven holds trade dress protection in the unique design of its Tred™ Sleeve.

Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 3

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
1850 Skyline Tower - 10900 N. E. Fourth Street
Bellevue, Washington 98004-8341
Telephone (425) 462-4700 FAX (425) 451-0714

12. Brenthaven's Tred™ Sleeve is radically different from the carrying cases that preceded it with a distinctive shape and appearance. As shown below, on its front side, the Tred™ Sleeve contains a number of unique, non-functional ornamental designs that comprise the trade dress at issue in this case, including: i) a series of ornamental stitching located on the top and side segments which serve to take away the appearance of the rectangular shape of the case; and ii) the use of a thicker, dark ornamental material extending roughly 1 inch throughout the bottom segment of the case and protruding beyond and outside the case.



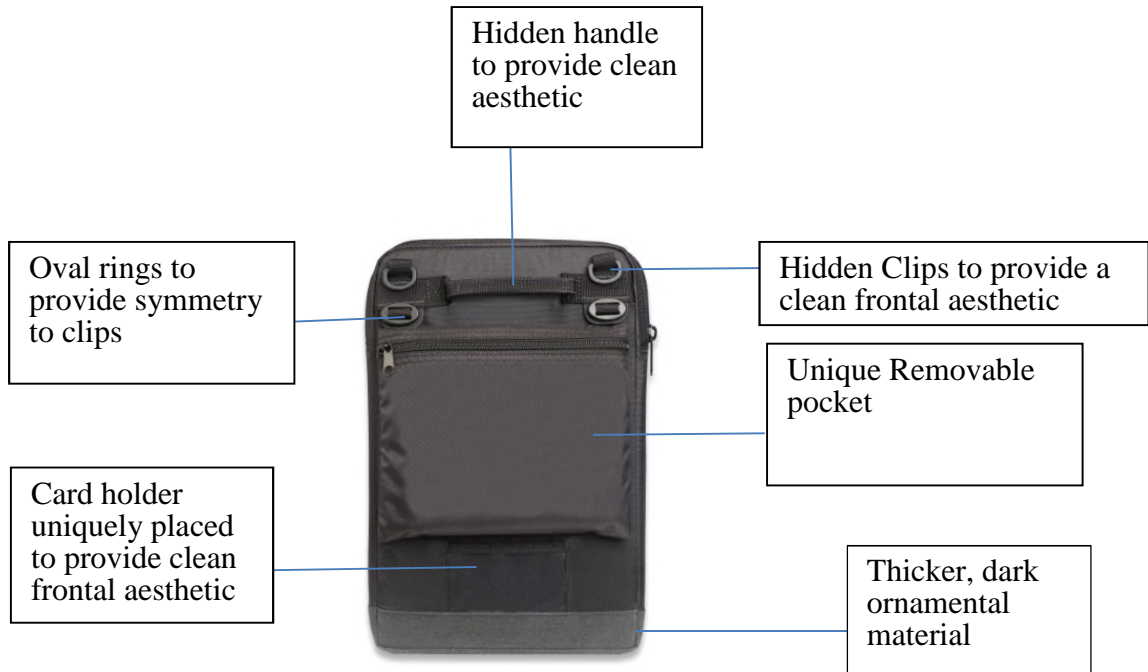
13. As shown below, the back side of the Tred™ Sleeve also contains a number of unique ornamental designs that comprise the trade dress at issue in this case, including: i) a hidden handle to provide clean aesthetics of the carrying case; ii) a pair of hidden clips to provide a clean frontal aesthetic of the carrying case; iii) a pair of oval rings to provide symmetry to clips; iv) a unique removable pocket; v) a card holder uniquely placed to provide clean frontal aesthetic; vi) a thicker, dark ornamental material extending roughly 1 inch throughout the bottom segment of the case and protruding beyond and outside the case.

Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 4

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
 1850 Skyline Tower - 10900 N. E. Fourth Street
 Bellevue, Washington 98004-8341
 Telephone (425) 462-4700 FAX (425) 451-0714



RIVERSIDE'S INFRINGING PRODUCT

14. For its parts, Riverside has sold in the United States a carrying case which it markets under the name Vertical Vault which infringes Brenthaven's Tred™ Sleeve trade dress. Rather than innovate and develop its own unique carrying case, Riverside has instead chose to copy Brenthaven's Tred™ Sleeve trade dress. The copying is so pervasive that Riverside's Vertical Vault is nearly an exact replica of Brenthaven's trade dress, as shown by the following side-by-side comparison of Brenthaven's Tred™ Sleeve and Riverside's Vertical Vault:

Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 5

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
1850 Skyline Tower - 10900 N. E. Fourth Street
Bellevue, Washington 98004-8341
Telephone (425) 462-4700 FAX (425) 451-0714

Brenthaven's Tred™ Sleeve	Riverside's Vertical Vault
	
	

15. Riverside chose to infringe Brenthaven's trade dress, and it did so willfully to trade upon the goodwill that Brenthaven has developed in connection with its family of carrying cases.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Trade Dress Infringement)

(Lanham Act Section 43(a), 15 U.S.C. § 1125(a))

16. Brenthaven incorporates and realleges paragraphs 1-14 of this Complaint above as if fully set forth herein.

17. Brenthaven is the owner of all right and title the distinctive Tred™ Sleeve

Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 6

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
1850 Skyline Tower - 10900 N. E. Fourth Street
Bellevue, Washington 98004-8341
Telephone (425) 462-4700 FAX (425) 451-0714

1 trade dress. Brenthaven's Tred™ Sleeve trade dress has acquired secondary meaning, and is not
2 functional.

3 18. Based on extensive and longstanding and consistent advertising,
4 promotion and product sales throughout the United States, Brenthaven's Tred™ Sleeve trade
5 dress has acquired distinctiveness and enjoys secondary meaning among consumers who identify
6 Brenthaven as the source of the Tred™ Sleeve trade dress.

7 19. Brenthaven's extensive promotion of the distinctive Tred™ Sleeve trade
8 dress has resulted in Brenthaven's acquisition of valuable, legally protected rights in the Tred™
9 Sleeve trade dress as well as considerable customer goodwill.

10 20. Rather than develop its own product design, Riverside has copied the
11 distinctive, non-functional features of Brenthaven's Tred™ Sleeve trade dress.

12 21. Riverside's manufacture and distribution of the Vertical Vault with a
13 product design that copies Brenthaven's Tred™ Sleeve trade dress is likely to cause confusion,
14 to cause mistake, and/or to deceive the consumers as to the source of the parties' products, and as
15 to the affiliation, connection or association of Riverside with Brenthaven, or as to the origin,
16 sponsorship, or approval by Brenthaven of Riverside's goods, services or commercial activities.

17 22. Riverside's manufacture and distribution of the Vertical Vault with a
18 product design that mimics the Tred™ Sleeve trade dress also enables Riverside to benefit
19 unfairly from Brenthaven's reputation and success, thereby giving Riverside's infringing
20 products sales and commercial value it would not and should not have or otherwise enjoy.

21 23. Riverside's actions violate Section 43(a) of the Lanham Act, 15 U.S.C. §
22 1125(a).

23 24. Upon information and belief, Riverside knew of the Tred™ Sleeve trade
24 dress when it designed its Vertical Value, and has refused to discontinue selling its product in
25 response to Brenthaven's demands and objections. Accordingly, Riverside's infringement has
26 been and continues to be intentional, willful and committed without regard to Brenthaven's
27

28 Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 7

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
1850 Skyline Tower - 10900 N. E. Fourth Street
Bellevue, Washington 98004-8341
Telephone (425) 462-4700 FAX (425) 451-0714

1 Tred™ Sleeve trade dress rights.

2 25. Unless Riverside's unlawful conduct is preliminarily and permanently
3 enjoined, Brenthaven has been and will continue to be irreparably harmed and damaged by
4 Riverside's conduct, and Brenthaven lacks an adequate remedy at law to compensate for this
5 harm and damage.

6 26. Brenthaven is informed and believes, and on that basis alleges, that
7 Riverside has gained ill gotten and underserved profits by virtue of its infringement of
8 Brenthaven's Tred™ Sleeve trade dress rights.

9 27. Brenthaven has also sustained damages as a direct and proximate result of
10 Riverside's infringement of Brenthaven's Tred™ Sleeve trade dress in an amount to be proven at
11 trial.

12 28. Because Riverside's actions have been willful, Brenthaven is entitled to
13 and hereby seeks an award of costs and reasonable attorneys' fees pursuant to 15 U.S.C. §
14 1117(a).

15 **SECOND CAUSE OF ACTION**

16 **(Washington State Unfair Competition)**

17 [RCW 19.86.020]

18 29. Brenthaven incorporates and realleges paragraphs 1-27 of this Complaint
19 above as if fully set forth herein.

20 30. Riverside's distribution, marketing, promotion, offering for sale and sale
21 of Brenthaven's Tred™ Sleeve trade dress constitutes unfair competition pursuant to the
22 Washington Consumer Protection Act, RCW 19.86.090.

23 31. Among other injuries, Riverside has created a likelihood of confusion
24 among the public as to original source of the Tred™ Sleeve, and has contributed to the dilution
25 of the distinctive quality of Brenthaven's work in the marketplace.

26 32. Brenthaven has been and will continue to be irreparably injured by reason
27

28 Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 8

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
1850 Skyline Tower - 10900 N. E. Fourth Street
Bellevue, Washington 98004-8341
Telephone (425) 462-4700 FAX (425) 451-0714

1 of Riverside's unfair methods of competition and unfair trade practices in violation of the
 2 Washington Consumer Protection Act. Such irreparable damage will continue unless the acts of
 3 Riverside are enjoined during the pendency of this action and thereafter.

4 33. In addition, Brenthaven is informed and believes, and on that basis alleges,
 5 that Riverside has gained ill gotten and underserved profits by virtue of its unfair competition
 6 with Brenthaven.

7 34. As a direct and proximate result of the actions of Riverside herein,
 8 Brenthaven has suffered actual damages in amounts to be proven at the time of trial.

9 VI. PRAYER AND RELIEF

10 WHEREFORE, Brenthaven prays for relief as follows:

11 a. An order preliminarily and permanently enjoining Riverside and its
 12 officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in
 13 privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns,
 14 from directly or indirectly infringing Brenthaven's Tred™ Sleeve trade dress or using any other
 15 product or design similar to or likely to cause confusion with Brenthaven's Tred™ Sleeve trade
 16 dress; from passing off Riverside's products as being associated with or sponsored or affiliated
 17 with Brenthaven; from committing any other unfair practices directed toward obtaining for itself
 18 the business and customers of Brenthaven; and from committing any other unfair business
 19 practices directed toward devaluing or diminishing the brand or business of Brenthaven;

20 b. An award of actual damages suffered by Brenthaven as a result of
 21 Riverside's unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest
 22 as authorized by law;

23 c. An accounting of Riverside's profits pursuant to 15 U.S.C. § 1117;

24 d. Restitutionary relief against Riverside and in favor of Brenthaven,
 25 including disgorgement of wrongfully obtained profits and any other appropriate relief;

26 e. Cost of suit and reasonable attorneys' fees; and
 27

28 Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 9

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
 1850 Skyline Tower - 10900 N. E. Fourth Street
 Bellevue, Washington 98004-8341
 Telephone (425) 462-4700 FAX (425) 451-0714

f. Any other remedy as this Court may deem just and proper.

DATED this 22nd day of December, 2016.

PETERSON RUSSELL KELLY PLLC

By /s/ Michael T. Callan
Michael T. Callan, WSBA# 16237
Attorneys for Defendant

Peterson Russell Kelly PLLC
10900 NE 4th St, Suite 1850
Bellevue, WA 98004-8341
Ph: 425.462.4700
Fax: 425.451.0714
Email: mcallan@prklaw.com

Case No.: _____

COMPLAINT FOR TRADE DRESS INFRINGEMENT- 10

104593 gm224c16bs

PETERSON RUSSELL KELLY PLLC
1850 Skyline Tower - 10900 N. E. Fourth Street
Bellevue, Washington 98004-8341
Telephone (425) 462-4700 FAX (425) 451-0714